

**STATE OF CALIFORNIA  
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY  
STATE WATER RESOURCES CONTROL BOARD**

**DIVISION OF WATER RIGHTS**

**PERMIT FOR DIVERSION AND USE OF WATER**

**PERMIT 21024**

Application 30630 of      **Paul E. and Shirley K. Dean  
Paul E. Dean Revocable Trust,  
Shirley K. Dean, Trustee  
1025 Greenfield Road  
St. Helena, CA 94574**

filed on **July 8, 1997**, has been approved by the State Water Resources Control Board (SWRCB)  
SUBJECT TO PRIOR RIGHTS and to the limitations and conditions of this permit.

**Permittee is hereby authorized to divert and use water as follows:**

1.    Source of water

Source  
Unnamed Stream

Tributary to  
Conn Creek thence  
Napa River thence  
San Pablo Bay

within the County of **Napa**

2. Location of point of diversion

By California Coordinate System in Zone 2	40-acre subdivision of public land survey or projection thereof	Section	Township	Range	Base and Meridian
<b>POD 1; North 309,400 feet and East 1,888,850 feet</b>	<b>NW ¼ of SW¼</b>	<b>26</b>	<b>8N</b>	<b>5W</b>	<b>MD</b>
<b>POD 2; North 309,800 feet and East 1,887,950 feet</b>	<b>NW ¼ of SW¼</b>	<b>26</b>	<b>8N</b>	<b>5W</b>	<b>MD</b>
<b>POD 3; North 308,750 feet and East 1,888,700 feet</b>	<b>NW ¼ of SW¼</b>	<b>26</b>	<b>8N</b>	<b>5W</b>	<b>MD</b>

3. Purpose of use	4. Place of use	Section	Township	Range	Base and Meridian	Acres
<b>Recreation, Fire Protection</b>	<b>NW¼ of SW¼</b>	<b>26</b>	<b>8N</b>	<b>5W</b>	<b>MD</b>	
<b>Irrigation, Frost Protection, Heat Control,</b>	<b>SW¼ of NW¼</b>	<b>26</b>	<b>8N</b>	<b>5W</b>	<b>MD</b>	<b>16</b>
	<b>NW¼ of SW¼</b>	<b>26</b>	<b>8N</b>	<b>5W</b>	<b>MD</b>	<b>7</b>
	<b>NE¼ of SW¼</b>	<b>26</b>	<b>8N</b>	<b>5W</b>	<b>MD</b>	<b>2</b>
					<b>Total</b>	<b>25</b>

The place of use is shown on map on file with the SWRCB.

5. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed a total of 25 acre-feet per annum to be collected from December 15 of each year to March 31 of the succeeding year as follows: 5 acre-feet per annum in #1 Reservoir, 15 acre-feet per annum in #2 Reservoir and 5 acre-feet in #3 Reservoir.

(0000005D)

6. This permit does not authorize collection of water to storage outside of the specified season to offset evaporation and seepage losses or for any other purpose.

(0014005I)

7. Complete application of the water to the authorized use shall be made by December 31, 2009.

(0000009)

8. The SWRCB reserves jurisdiction to impose conditions to conform this permit to SWRCB policy on use of water for frost protection. Action by the SWRCB will be taken only after notice to interested parties and opportunity for hearing.

(0000020)

9. During the season specified in this permit, the total quantity and rate of water diverted, stored, and used under this permit and under permittee's claimed existing right for the place of use specified in the permit shall not exceed the quantity and rate of diversion, storage, and use, respectively, specified in this permit. If the permittee's claimed existing right is quantified at some later date as a result of an adjudication or other legally binding proceeding, the quantity and rate of diversion, storage, and use allowed under this permit shall be the net of the face value of the permit less the amounts of water available under the existing right.

Permittee shall forfeit all rights under this permit if permittee transfers all or any part of the claimed existing right for the place of use covered by this permit to another place of use without the prior approval of the SWRCB.

Permittee shall take and use water under the existing right claimed by permittee only in accordance with law.

(0000021)

10. Permittee shall comply with the following provisions which are derived from the agreement between permittee and the Department of Fish and Game executed on October 18, 1999 and filed with the SWRCB.

(1) For the protection of fish and wildlife, Permittee shall bypass 0.25 cubic-feet per second at POD#1. The total stream flow shall be bypassed when ever it is less then the designated amount. The bypass facility shall be a passive system which shall intercept streamflow upstream of the reservoir and discharge it into the spillway or the natural watercourse downstream of the dam. The bypass facility shall be designed so that the foregoing bypass flow is satisfied before any diversions to storage are made.

The design of the bypass facility shall be in accordance with good engineering practice, with due consideration given to the prevention of flow obstruction resulting from debris and segmentation, and up-sizing of the bypass pipeline if necessary to prevent clogging. The minimum bypass pipeline diameter shall be 6 inches. The design shall include provisions for reasonable access to the facility for clearing of obstructions should they occur. Permittee shall submit plans and specifications for the bypass facility to the Department of Fish and Game and the Chief of the Division of Water Rights for approval prior to installation.

(2) Permittee shall not make any diversions under this permit from April 1 to December 14. Flows exceeding the capacity of the bypass facility during this period shall be released by pump, low-level outlet, or siphon over the dam.

(3) Permittee shall allow representatives from the Department of Fish and Game access to the project for a the purpose of monitoring compliance with the terms and conditions of this permit. Such access shall be limited to access roads, designated by the permittee, leading directly to the points of diversion, reservoirs, and bypass facilities. Permittee shall not be held liable for any injury or damage which may be sustained by Department personnel or vehicles resulting from compliance inspections conducted without prior notification and in the absence of permittee.

(4) Recreational use shall be non-consumptive and incidental to other uses. Use of water for fire protection shall be incidental and shall be used only in emergency situations.

(5) Permittee agrees that under all basis of rights the total amount of water to be diverted for the purposes and places of use described in this permit shall not exceed 50 acre-feet annually.

Inclusion in this permit of certain provisions of the referenced agreement shall not be construed as disapproval of other provisions of the agreement or as affecting the enforceability, as between the parties, of such other provisions insofar as they are not inconsistent with the terms of this permit.  
(0000024)

11. Permittee shall install and properly maintain in the reservoir a staff gage, satisfactory to the SWRCB, for the purpose of determining water levels in the reservoir.

Permittee shall record the staff gage reading on or about October 1 of each year. Such readings shall be supplied to the SWRCB with the next progress report submitted to the SWRCB by permittee.

The SWRCB may require the release of water which cannot be verified as having been collected to storage prior to October 1 of each year.

Permittee shall allow the Department of Fish and Game and all successors in interest, or a designated representative, reasonable access to the reservoir for the purpose of verifying staff gage readings and determining water levels in the reservoir.

(0070047)

(0100047)

12. In accordance with section 1601, 1603, and/or Section 6100 of the Fish and Game Code, no work shall be started on the diversion works and no water shall be diverted under this permit until permittee has entered into a stream or lake alteration agreement with the California Department of Fish and Game and/or the Department has determined that measures to protect fishlife have been incorporated into the plans for construction of such diversion works. Construction, operation, and maintenance costs of any required facility are the responsibility of the permittee.

(0000063)

13. Prior to the start of construction permittee shall provide the Division with a copy of any grading permit issued by the County of Napa Department of Public Works and/or any erosion control plan prepared for the construction of the water diversion and distribution system and/or for planting/re-planting of the vineyards in the Places of Use. Compliance with all terms in any grading permit and/or erosion control plan is required.

(0014060)

14. Should any buried archeological materials be uncovered during project activities, such activities shall cease within 100 feet of the find. Prehistoric archeological indicators include: obsidian and chert flakes and chipped stone tools; bedrock outcrops and boulders with mortar cups; and locally darkened midden soils containing some to the previously listed items plus fragments of bone and fire affected stones. Historic period site indicators generally include: fragments of glass, ceramic and metal objects; milled and split lumber; old trails; and structure and feature remains such as building foundations and dumps. The Chief of the Division of Water Rights shall be notified of the discovery and a professional archeologist shall be retained by the applicant to evaluate the find and recommend appropriate mitigation. Project related activities in the area of the find shall resume only after the completion of the recommended mitigation, as approved by the Chief of the Division of Water Rights.

(0380500)

15. During years in which Lake Hennessey does not spill, upon request from the City of Napa, permittee shall immediately release water from the reservoirs at the maximum practicable rate, up to the total quantity impounded that diversion season, to flow into Lake Hennessey.

Permittee shall not be obligated to release water in the reservoirs below the previous October 1 staff gage reading, unless permittee has withdrawn water from the reservoirs for consumptive purposes since October 1.

(Term C)

16. This permit is specifically subject to the prior right of Patrick J. Garvey under appropriation issued pursuant to Application 27607; specifically subject to the prior right of Domaine Mumm, Inc. under appropriation issued pursuant to Permits 20629 and 20630 (Applications 29037 and 29038); specifically subject to the prior right of Beckstofer Vineyards under appropriation issued pursuant to Permits 18120A03 & B03 (Applications 25440A03 & -B03) and 18119A03 & -B03 (Applications 24433A03 & -B03); specifically subject to the prior right of W. Andrew Beckstofer under appropriation issued pursuant to Permit 18309B (Application 25833B) and License 12212 (Application 25833A); specifically subject to the prior right of Lillian B. Disney under appropriation issued pursuant to License 11135 (Application 24018), License 12400 (Application 27444) and License 11136 (Application 23308); specifically subject to the prior right of Dos Rios Partners under appropriation issued pursuant to License 11952 (Application 24327); and is specifically subject to the prior right of Heublein Inc. - Herrick I, II under appropriation issued pursuant to License 12349 (Application 23888) and License 12348 (Application 23887).

(Term T)

**17. ALL PERMITS ISSUED BY THE STATE WATER RESOURCES CONTROL BOARD ARE SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:**

(A) Permittee shall maintain records of the amount of water diverted and used to enable SWRCB to determine the amount of water that has been applied to beneficial use pursuant to Water Code Section 1605.

(B) The amount authorized for appropriation may be reduced in the license if investigation warrants.

(C) Progress reports shall be submitted promptly by permittee when requested by the SWRCB until a license is issued.

(D) Permittee shall allow representatives of the SWRCB and other parties, as may be authorized from time to time by said SWRCB, reasonable access to project works to determine compliance with the terms of this permit.

(E) Pursuant to California Water Code sections 100 and 275, and the common law public trust doctrine, all rights and privileges under this permit and under any license issued pursuant thereto, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of SWRCB in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of said water.

The continuing authority of the SWRCB may be exercised by imposing specific requirements over and above those contained in this permit with a view to eliminating waste of water and to meeting the reasonable water requirements of permittee without unreasonable draft on the source. Permittee may be required to implement a water conservation plan, features of which may include but not necessarily be limited to (1) reusing or reclaiming the water allocated; (2) using water reclaimed by another entity instead of all or part of the water allocated; (3) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (4) suppressing evaporation losses from water surfaces; (5) controlling phreatophytic growth; and (6) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this permit and to determine accurately water use as against reasonable water requirements for the authorized project. No action will be taken pursuant to this paragraph unless the SWRCB determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation.

The continuing authority of the SWRCB also may be exercised by imposing further limitations on the diversion and use of water by the permittee in order to protect public trust uses. No action will be taken pursuant to this paragraph unless the SWRCB determines, after notice to affected parties and opportunity for hearing, that such action is consistent with California Constitution Article X, Section 2; is consistent with the public interest; and is necessary to preserve or restore the uses protected by the public trust.

(F) The quantity of water diverted under this permit and under any license issued pursuant thereto is subject to modification by the SWRCB if, after notice to the permittee and an opportunity for hearing, the SWRCB finds that such modification is necessary to meet water quality objectives in water quality control plans which have been or hereafter may be established or modified pursuant to Division 7 of the Water Code. No action will be taken pursuant to this

paragraph unless the SWRCB finds that (1) adequate waste discharge requirements have been prescribed and are in effect with respect to all waste discharges which have any substantial effect upon water quality in the area involved, and (2) the water quality objectives cannot be achieved solely through the control of waste discharges.

(G) This permit does not authorize any act which results in the taking of a threatened or endangered species or any act which is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish and Game Code sections 2050 to 2097) or the federal Endangered Species Act (16 U.S.C.A. sections 1531 to 1544). If a "take" will result from any act authorized under this water right, the permittee shall obtain an incidental take permit prior to construction or operation. Permittee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the project authorized under this permit.

***This permit is issued and permittee takes it subject to the following provisions of the Water Code:***

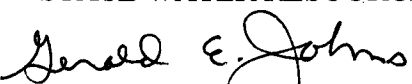
*Section 1390. A permit shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity with this division (of the Water Code), but no longer.*

*Section 1391. Every permit shall include the enumeration of conditions therein which in substance shall include all of the provisions of this article and the statement that any appropriator of water to whom a permit is issued takes it subject to the conditions therein expressed.*

*Section 1392. Every permittee, if he accepts a permit, does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State therefor shall at any time be assigned to or claimed for any permit granted or issued under the provisions of this division (of the Water Code), or for any rights granted or acquired under the provisions of this division (of the Water Code), in respect to the regulation by any competent public authority of the services or the price of the services to be rendered by any permittee or by the holder of any rights granted or acquired under the provisions of this division (of the Water Code) or in respect to any valuation for purposes of sale to or purchase, whether through condemnation proceedings or otherwise, by the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State, of the rights and property of any permittee, or the possessor of any rights granted, issued, or acquired under the provisions of this division (of the Water Code).*

**Dated:** MAR 03 2000

STATE WATER RESOURCES CONTROL BOARD

  
for Chief, Division of Water Rights